EXCERPTS FROM THE COMPLAINT.

* * * * * * *

3. Defendant, Louisville and Nashville Railroad Company, is a Kentucky corporation engaged in interstate transportation of freight and passengers with its chief office and place of business at Louisville, Kentucky, and is a carrier as defined by the Railway Labor Act, 1934. Plaintiffs and the others whom they represent are all long time employes of said defendant, Railroad Company, proud of their connection with said defendant and differing from said defendant only as to the interpretation of contracts as will hereinafter appear.

4. Defendant, System Federation No. 91, Railway Employes' Department, A.F.L.-C.I.O., is an unincorporated association, or labor union, all of whose members are employees of the Louisville and Nashville Railroad Company and are likewise members of one or the other of the following labor unions, each of which is an international unincorporated association whose members are employed by the Louisville and Nashville Railroad Company and other interstate railroads, each of which unincorporated association is a labor union, composed of various local lodges or unions located at various points upon the Louisville and Nashville Railroad Company and other interstate railroads, each of which lodges or local unions is an unincorporated association whose members are employees of the Louisville and Nashville Railroad Company or of the particular railroad upon which said local is located, said labor unions operating upon the Louisville and Nashville Railroad Company lines, through the System Federation, including the following unions: International Association of Machinists, Sheetmetal Workers International Association, International Brotherhood of Electrical Workers and the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers.

* * * * * * *

Excerpts From the Complaint

9. An Agreement made pursuant to said Railway Labor Act 1934, as amended, effective September 1, 1943 with revisions up to February 1, 1952 was in effect on and prior to February 18, 1957, between the defendant Railroad Company and the Machinists Union, the Sheetmetal Workers Union, and the Electricians Union, operating through said System Federation No. 91, covering rules and working conditions. A copy of said Agreement is filed herewith marked "Exhibit A."

10. An Agreement made pursuant to the Railway Labor Act 1934, as amended, effective June 1, 1942 with revisions up to November 1, 1946, was in effect on and prior to February 18, 1957 between the defendant Louisville and Nashville Railroad Company and International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, represented by System Federation No. 91, covering rules and working conditions. A copy of said Agreement is filed herewith marked "Exhibit B".

11. The following provisions of the skilled employes' agreement relating to seniority were in effect prior to and on February 18, 1957, and still are in effect:

> "29(a) Seniority of each employe covered by this agreement will begin from the date and time the employe starts to work.
>
> "29(b) Seniority of employes in each craft covered by this agreement shall be confined to the point employed for those who perform work as per special rules of each craft in the various departments of the railroad as follows:
>
> Machinists
> Boilermakers
> Sheet Metal Workers
> Moulders
> Electricians

Excerpts From the Complaint

"Four subdivisions of the Carmen as follows:

Patternmakers
Upholsterers
Painters
Other Carmen
Coach Cleaners

"At Louisville, Kentucky, seniority rosters for each craft will be maintained as follows:

Machinists
South Louisville Shops
South Louisville Roundhouse

Boilermakers
South Louisville Shops
South Louisville Roundhouse

Sheet Metal Workers
South Louisville Shops
South Louisville Roundhouse
Union Passenger Station

Electricians
South Louisville Shops
South Louisville Roundhouse
Union Passenger Station

Other Carmen

"At South Louisville Shops the Air Brake Room, Coach Carpenters, Painters, Tank Shop #12, Planing Mill, Cabinet Shop and Plating Shop; and Louisville Terminal Car Department, Roundhouse and Union Passenger Station seniority rosters will be maintained separately as heretofore.

* * * * * * * * *

20. Plaintiffs and the employes they represent had worked for many years at defendant Railroad Company's South Louisville Roundhouse. As provided in said agreements they were listed on the Rosters for the South Louis-

ville Roundhouse according to seniority from their last employment by defendant Railroad Company. • • •

21. On February 4, 1957 the Master Mechanic who had previously had supervision over the South Louisville Roundhouse and since July 1, 1956, of the South Louisville Shops also, issued bulletin No. 39 relating to South Louisville Roundhouse employes, which reads as follows:

"LOUISVILLE & NASHVILLE RAILROAD CO.
Office of the Master Mechanic
So. Louisville, Ky., February 4th, 1957

BULLETIN No. 39

TO ALL EMPLOYEES CONCERNED:

Effective at the close of work of the third shift, February 17, 1957, all Mechanical operations of the South Louisville Roundhouse will be discontinued.

All roundhouse forces will be laid off in keeping with Rule 26 of the skilled employes agreement, and Rule 13 of the unskilled employes agreement.

As a result of the foregoing, the following employes will be cut off in force reduction:

• • • • • •

27. The action of the defendant Railroad Company in laying off the plaintiffs and the other employes whom they represent was without any justification, arbitrary and in violation of the agreements between the various classes of employes affected and the defendant Railroad Company.

28. • • •

On January 28, 1957 representatives of the defendant Railroad Company held a conference with the Shop Craft Representatives comprising System Federation No. 91, A.F.L.-C.I.O. and representatives of each of the four unions involved in this action. At that conference these represent-

atives of the System Federation and of these unions were fully apprised as to the alleged details of force reduction. The representatives of System Federation No. 91 A.F.L. made no objection to the laying off of the plaintiffs and the employes whom they represent and acceded to the interpretation of the contracts in line with the proposed action of the defendant Railroad Company.

Plaintiffs and the other employes whom they represent all protested within ten days against their being laid off and being required to accept employment as of a new seniority date not earlier than February 18, 1957 but their protests were denied by the defendant Railroad Company.

29. Plaintiffs and the employes whom they represent then took an appeal to the National Railroad Adjustment Board, Second Division, and said appeal was heard by said Board but said Board on June 30, 1958 found that the grievance arose because of the closing of the South Louisville Roundhouse, a separate seniority point of the Carrier and that there was no provision in the contract requiring the dovetailing of seniority rights.

* * * * * * * *

32. By reason of said acts of said defendant Railroad Company in failing to recognize the seniority rights, and the rights to employment of plaintiffs and the other employes they represent, each of said employes has been damaged both in loss of job rights, loss of vacation rights and actual loss of time at work, which can be computed after a declaration of rights.

* * * * * * * *

WHEREFORE, plaintiffs pray and demand

1. A declaration of rights as against defendant Railroad Company for each of the plaintiffs and the other employes listed on the South Louisville Roundhouse Roster

on February 17, 1957, under the contracts between defendant Railroad Company and said Unions.

2. A declaration of rights as between System Federation No. 91 and defendant International Unions, as to the interpretation of said contracts.

3. An accounting by the defendant Railroad Company to each of said employes on the South Louisville Roundhouse Roster for the wages for time lost.

4. Recovery against the defendant System Federation and defendant Unions for plaintiffs' expenses herein, and recovery against all defendants of costs and an appropriate fee for plaintiff's counsel.

MOTION OF LOUISVILLE AND NASHVILLE RAILROAD COMPANY TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT.

* * * * * * *

Defendant, Louisville and Nashville Railroad Company, by counsel, moves the Court to dismiss this action, or, in the alternative, for a summary judgment on behalf of the defendant on the grounds that this Court does not have jurisdiction of the subject matter of the complaint, because (1) Under the Railway Labor Act, 45 U.S.C.A. 153, *exclusive* jurisdiction is vested in the National Railroad Adjustment Board in disputes involving the interpretation of collective bargaining agreements. The subject matter of the complaint is a dispute between employees and their employer involving the interpretation of collective bargaining agreements, and, therefore, this Court has no jurisdiction of the subject matter of the complaint. (2) The employee plaintiffs having already taken their case to the National Railroad Adjustment Board and said Board having already

decided the issue involved in said case adversely to the employee plaintiffs, they are bound by said Board's decision, and this Court would have no jurisdiction in the matter.

Defendant files herewith and makes part of this motion the affidavit of W. S. Scholl, Director of Personnel of the Louisville and Nashville Railroad Company.

AFFIDAVIT OF W. S. SCHOLL.

* * * * * * *

Affiant, W. S. Scholl, after first having been duly sworn, states that he is Director of Personnel of the Louisville and Nashville Railroad Company with headquarters at Louisville, Kentucky. As such Director of Personnel, it is his duty and responsibility to make collective bargaining agreements with the collective bargaining representatives of the various crafts or classes of employees represented by said collective bargaining representatives. It is his further duty and responsibility to handle disputes and grievances arising under said collective bargaining agreements and the interpretation thereof.

Affiant further states that at all times involved herein, e International Association of Machinists was and is now the collective bargaining representative of the craft or class known as machinists; that the Sheetmetal Workers International Association was and is now the collective bargaining representative of the craft or class known as pipefitters; that the International Brotherhood of Electrical Workers was and is now the collective bargaining representative of the craft or class known as electricians and International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers was and is now the collective bargaining representative of the craft or class known as

laborers; that all of said unions operate through System Federation No. 91 of the Railway Employes' Department, A.F.L.-C.I.O.

Affiant further states that the Louisville and Nashville Railroad Company has entered into collective bargaining agreements with said unions covering the crafts or classes of employees represented by them, in accordance with the provisions of the Railway Labor Act.

Affiant further states that in accordance with the collective bargaining agreements heretofore mentioned, separate and distinct seniority districts were established for employees working in the South Louisville Roundhouse and the South Louisville Shops. As a result of said separate and distinct seniority districts, the seniority of employees working at the South Louisville Roundhouse was confined to that point and they had no seniority right or right to work in the South Louisville Shops.

Affiant further states that on or about February 17, 1957, all mechanical operations previously performed at the South Louisville Roundhouse were discontinued and, as a result thereof, it was necessary to furlough all employees engaged in the operations of said South Louisville Roundhouse.

Affiant further states that although all mechanical operations formerly performed in the South Louisville Roundhouse have been discontinued, seniority rosters are now and will continue to be maintained covering all employees working at said point and in which each of them now and will continue to maintain their seniority standing established at the time of the discontinuance of said mechanical operations. In the event that mechanical operations should at some time in the future be re-established at the South Louisville Roundhouse, the said employees will be given priority to the work to be performed there

and with the seniority they had established before such operations were discontinued on or about February 17, 1957.

Affiant further states that upon being furloughed on or about February 17, 1957, as set out above, employees were given the opportunity to work in the South Louisville Shops, but it was necessary for them to begin their work there as new employees because the seniority they accumulated as employees of the South Louisville Roundhouse could not be transferred with them to the South Louisville Shops under the provisions of the applicable collective bargaining agreements.

Affiant further states that the said employees furloughed on or about February 17, 1957, were dissatisfied because the seniority accumulated by them in the South Louisville Roundhouse seniority district could not be carried over by them into the seniority district of the South Louisville Shops and dovetailed or interwoven with the seniority of the employees working and having seniority in the South Louisville Shops, according to seniority dates.

Affiant further states that said employees took their dispute to the National Railroad Adjustment Board pursuant to the provisions of the Railway Labor Act. A copy of their submission is attached hereto, and made part hereof, marked Exhibit "A".

Affiant further states that the Louisville and Nashville Railroad Company made its reply to said submission, a copy of which is attached hereto, and made part hereof, marked Exhibit "B".

The National Railroad Adjustment Board found that said employees had no right to have their seniority established in the South Louisville Roundhouse dovetailed or interwoven with the seniority established by employees working in the South Louisville Shops. Therefore, the National Railroad Adjustment Board found that the con-

trolling collective bargaining agreement had not been violated by the Louisville and Nashville Railroad Company and the claims of the employees were denied. A copy of said award is attached hereto, and made part hereof, marked Exhibit "C".

According to the provisions of the Railway Labor Act (45 U.S.C.A. Section 153 (m)), the award of the National Railroad Adjustment Board is final and binding upon the said employees and upon the Louisville and Nashville Railroad Company.

(s) W. S. Scholl.

Commonwealth of Kentucky:
County of Jefferson:

Subscribed and sworn to before me this 30th day of Mar., 1960.

My Commission expires February 19, 1963.

(s) A. M. Bradford,
Notary Public,
Jefferson County, Kentucky.

(Seal)

Adjustment Board Award No. 2899

Award No. 2899
Docket No. 2787-I
2-L&N-I-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

J. D. MASDEN, ET AL.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) By Bulletin dated February 4, 1957, the Louisville and Nashville Railroad Co., (hereinafter referred to as the Carrier) announced the discontinuance of all mechanical operations of its South Louisville Roundhouse, effective at the close of the third shift, February 17, 1957. Petitioning employees (hereinafter called petitioners) who prior to that date had been making inspections and running repairs to and servicing diesel locomotives, at points which for more than fifty years had been considered in the South Louisville Roundhouse district, were cut off in force reduction, purportedly under Rule 26 of the skilled employees' agreement and Rule 13 of the unskilled employees' agreement. Immediately following the discontinuance by the Carrier of such operations, the jobs comprising such operations were bulletined by the Carrier. Some of such jobs were bid in by other employees of the Carrier junior in seniority to petitioners. The remaining jobs were by the Carrier assigned to junior employees or assigned to some of petitioners with a new seniority dating of February 18, 1957. In the reduction of forces and restoration of forces, petitioners' seniority was not protected as required by Rule 29 and Rule 31(e) of the skilled agreement and Rule 10 and Rule 14(e)

of the unskilled agreement. Employees junior in seniority to petitioners (some of whom have been brought in from outlying points) are now doing their work. Petitioners have continued to do the same kind of work and in the same places as prior to February 18, 1957, but have been assigned to less desirable shifts and hours of employment and their seniority now stands only as of February 18, 1957, though many of them have more than thirty years' seniority.

2. Notwithstanding the Carrier purportedly abandoned the South Louisville Roundhouse and discontinued all mechanical operations thereof, it continues to maintain seniority rosters for the Roundhouse district and petitioners have the same seniority standing thereon as prior to February 18, 1957. Nevertheless their employment since that date has been upon the basis of seniority in the South Louisville Shops as of February 18, 1957.

3. The Carrier has refused to dove-tail the seniority of petitioners in with the employees of the South Louisville Shops, as of that date, and the Unions, being the bargaining representatives of the crafts to which petitioners belong, have refused to request of the Carrier the dove-tailing of petitioners' seniority with said South Louisville Shop employees.

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4. QUESTIONS UPON WHICH AN AWARD IS SOUGHT.

(a) Under the respective agreements in force, can the Carrier deprive petitioners of their seniority standing under the pretext of discontinuing jobs and reducing force, when the same work is being done as before and in the same places?

(b) Are not petitioners entitled to be dove-tailed in seniority with other employees of the South Louisville Shops, if their work continues to be assigned to said Shops?

Adjustment Board Award No. 2899

EMPLOYES' STATEMENT OF FACTS: (1) On February 4, 1957, the carrier posted on the Bulletin Board of its South Louisville Roundhouse, Bulletins No. 39, No. 41 and No. 42 and on February 5, 1957, posted Bulletin No. 40. Each Bulletin bore the name of J. A. Parrish, who at said time was and now is the carrier's master mechanic for its Louisville Division, and was directed to all employes concerned.

2. Each Bulletin announced as follows:

> "Effective at the close of work of the third shift, February 17, 1957, all Mechanical operations of the South Louisville Roundhouse will be discontinued.
>
> All roundhouse forces will be laid off in keeping with Rule 26 of the skilled employes agreement, and Rule 13 of the unskilled employes agreement.
>
> As a result of the foregoing, the following employes will be cut off in force reduction."

3. Here appeared the list of employees with their respective seniority dates who were cut off in force reduction.

4. Bulletin No. 39 named the machinists cut off from their former jobs, Bulletin No. 40 named the electricians, Bulletin No. 41 named the pipefitters and Bulletin 42 named the laborers.

5. As of January 1, 1957, the carrier posted on its bulletin board at its Louisville Terminal (which is the same seniority district as the South Louisville Roundhouse) its mechanical department seniority roster revised as of January 1, 1957. Said roster showed thereon the name of each of petitioners with his correct seniority date, being the same seniority date as that shown on Bulletins Nos. 39, 40, 41 and 42 with respect to the employes named therein and being the same seniority date as shown in part No. 1 hereof "Parties to Dispute".

6. Effective as of February 18, 1957, petitioners were given a seniority dating at the South Louisville Shops as of

February 18, 1957. The work performed for the carrier by the petitioners in their respective crafts since February 18, 1957, has been on the basis of the seniority dating from that date.

7. Within ten days from the effective date of Bulletins Nos. 39, 40, 41 and 42 and in keeping with Rule 26(c) of the skilled employes' agreement and with Rule 14 of the unskilled employes' agreement, each of petitioners filed with J. A. Parrish, master mechanic of the carrier at Shop No. 17, Louisville, Kentucky, with a copy to the general chairman of the shop union representing his craft, a written protest against the discontinuance of his job at the South Louisville Roundhouse pursuant to the carrier's bulletin applicable to his craft and referred to above. The written protest gave petitioner's name, his craft in which employed and the seniority date in his classification. Each petitioner in said written protest requested the protection of his seniority and his employment in his qualification (as machinist, pipefitter, electrician or laborer, as the case might be) in keeping with his seniority. Each written protest bore the name of the employe together with his address. A copy of the form of the written protest so used by each of said petitioners is filed herewith to be read as part hereof. The blanks were appropriately filled in by each of petitioners.

8. Within sixty days from the placing of each of petitioners' names on the seniority roster of the South Louisville Shops, and in accordance with Rule 29(c) of the skilled employes' agreement and Rule 9 of the unskilled employes' agreement, each of said petitioners filed with J. A. Parrish, master mechanic of the carrier, at Shop No. 17, Louisville, Kentucky, with a copy to the general chairman of the union representing the craft to which each of said petitioners belonged, a written protest against the placing of said petitioner's name on the seniority roster of the South Louisville Shops with a dating of February 18, 1957, and reques-

ted that his seniority standing on said roster be changed to show his true seniority. A copy of the form of the written protest so used by each of said petitioners is filed herewith to be read as part hereof. The blanks were appropriately filled in by each of petitioners.

9. On March 4, 1957, Marshall P. Eldred, counsel for petitioners, wrote and mailed to J. A. Parrish, master mechanic of the carrier's Louisville Division, with copies to J. F. Ryan, chief mechanical officer of the carrier, and W. R. Winkler, superintendent of the carrier's Louisville Division, a letter with reference to Bulletins Nos. 39, 40, 41, and 42 and requesting advice with respect to the seniority standing of each of petitioners whose names appeared on said bulletins, effective as of the date of said letters.

10. In response to the letter mentioned in the preceding paragraph, counsel for petitioners received a reply dated March 25, 1957, from W. S. Scholl, the carrier's director of personnel, advising that seniority rosters were being maintained for the roundhouse district and that petitioners' names appeared on the list. Counsel was also advised that petitioners whose names appeared on the list attached to counsel's letter of March 4, 1957, had the same standing there and on February 18, 1957, as they had prior to that date. Counsel was further advised that the seniority dating of petitioners at the South Louisville Shops was as of February 18, 1957.

11. Under date of April 1, 1957, Marshall P. Eldred, counsel for petitioners, wrote and mailed to the following general officers of the carrier, to-wit:

John E. Tilford, President.

Z. E. Scott, Jr., Assistant to the President.

W. H. Kendall, Vice-President in Charge of Operation.

W. S. Scholl, Director of Personnel.
J. F. Ryan, Chief Mechanical Officer.
W. R. Winkler, Superintendent of Louisville Division.

a letter advising such general officers of his representation of petitioners. Said letter made reference to Bulletins Nos. 39, 40, 41 and 42 and advised that petitioners had thereafter protested the carrier's action in writing to master mechanic, J. A. Parrish, with a copy to the respective general chairman. Said letter further advised that petitioners had received no response to their protest, that the same work was being carried on in the South Louisville Roundhouse district as before except that said work was being done by men whose seniority standing was junior to that of petitioners. Said letter also referred to counsel's letter of March 4, 1957, to Mr. Parrish and Mr. Scholl's reply of March 25, 1957. The general officers of the carrier named above were further advised in said letter that petitioners had suffered an unauthorized and illegal loss of their seniority which had been acquiesced in and agreed to by the unions representing their crafts. Said letter requested that petitioners be granted a hearing on their protest and that they be restored to the seniority and jobs held by them prior to February 18, 1957, with full restoration of any pay lost since that date. Copies of said letter were sent to:

W. W. Smith, General Chairman of the International Association of Machinists.

Herman Webb, General Chairman International Brotherhood of Electrical Workers.

J. Hugh Whelchel, General Chairman Sheetmetal Workers International Association.

Ray Abner, General Chairman Brotherhood of Railway Shop Laborers.

12. In response to counsel's letter referred to in the preceding paragraph, said counsel received from Mr. John E. Tilford, the carrier's president, a letter dated April 4, 1957, advising that he would have the matter looked into and an investigation made.

13. In further answer to counsel's letter of April 1, 1957, counsel received from H. G. Breetz, an assistant general attorney for carrier, a letter dated April 23, 1957, advising that when all mechanical operations of the South Louisville Roundhouse were discontinued, all positions in that seniority district were abolished by bulletin. The letter further advised that the carrier's action in so doing, as well as all of its subsequent actions, were strictly in accord with the respective bargaining agreements. In this letter, the carrier declined to comply with the requests contained in counsel's letter of April 1, 1957, addressed to the carrier's general officers.

14. About the year 1901 the South Louisville Roundhouse was constructed. About the year 1908 the back shops, now known as the South Louisville Shops, was constructed. Since that time and until February 18, 1957, repairs to locomotives have been done by these two different shops, known respectivyly as the roundhouse and the back shop, and a seniority roster for many years has been maintained for each craft at the South Louisville roundhouse and the South Louisville shops. Each was supervised by its own master mechanic and the two master mechanics were responsible to the superintendent of machinery or chief mechanical officer.

15. The work done by the roundhouse force has been light repairs, running repairs and daily, monthly, semi-annual and annual inspections. The heavy repairs were done by the back shop forces.

Adjustment Board Award No. 2899

16. For more than fifty years the boundary line between the roundhouse and the back shop has been recognized. It comprised a board fence which stood east of the short line mains as they existed until 1956, at which time the short line mains were moved to the west a short distance and located just east of the site of the roundhouse. The back shop has always been and is now east of this fence. The roundhouse was west of this fence. In 1948, inspection and work pits were constructed west of the boundary fence near the roundhouse and just east of the present location of the short line mains. In 1956 new inspection and work pits were constructed west of the boundary fence and on the site of the short line mains as they existed prior to the move referred to above. A portion of the boundary fence was then removed adjacent to these new inspection and work pits.

17. About 1949 the carrier had acquired so many diesel engines it became necessary to construct new facilities for making repairs. A shop known as the diesel shop or Shop No. 17 was then constructed about 100 feet east of the boundary fence. All of the work, thereafter done in the diesel shop, to-wit: light repairs, running repairs and daily, monthly, semi-annual and annual inspections, was the same work that had been performed in the roundhouse and a part of which continued to be done in the roundhouse until 1956. When the carrier completely dieselized its Louisville Division, it became necessary to install new facilities to handle inspection, general servicing and running repairs of its diesel engines at the roundhouse. The result was the construction of the inspection and work pits referred to in Paragraph 16. Since November 27, 1956, petitioners, constituting the roundhouse forces, have been performing the inspections, servicing and running repairs at these new

pits, maintaining their original seniority rating until February 18, 1957.

18. On July 1, 1956, J. A. Parrish was the master mechanic of the Louisville Division and as such in charge of the roundhouse forces and W. C. Rollings was master mechanic in charge of the forces at the back shop. On that date the carrier extended the jurisdiction of Master Mechanic J. A. Parrish, by including within his jurisdiction the servicing and making of light and running repairs to diesel engines at the diesel shop known as Shop No. 17. Notice of this was issued by the carrier under date of July 1, 1956, signed by W. R. Winkler, superintendent, and approved by J. F. Ryan, chief mechanical officer.

19. Prior to February 18, 1957, petitioners who are machinists performed duties of which the following are typical and illustrative:

(a) Inspections of: Air brake equipment; Windshield wipers; Horns; Bells and bellringers; Air pump governors; Air compressors; Engine governors; Running gear and safety appliances; Supply boxes; Oil and crankcase.

(b) Check of: Federal forms in engines and mileage cards for proper dates and for making record report; Speedometer readings and making record report; Wheels for flat spots; Train control brake test; Unit to unit application and release brake test; Air and water leaks.

(c) Repairs to or replacement of: Locomotive governors; Injectors, nozzles and fuel pumps; Inspection plates and gaskets; Test valves; Nugent lubricating oil filters; Bronze filters; Full flow fuel filters; Water pumps; Shutter assemblies; Thermostats; Engine air filters; Car body filters; Speedometer and cables; Valve tappets; Brake shoes; Gaskets in superchargers; Brake cylinders; Pistons; Packing cups and springs.

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20. Prior to February 18, 1957, petitioners who are sheetmetal workers performed duties of which the following are typical and illustrative:

Check, repair and renew sand pipe and line to rail.

Remove, repair and check bleeder valve, control valve, relay valve, operating valve and clean out wet and stopped up sanders.

Change fuel oil strainers.

Replace missing oil caps.

Replace missing water tank caps and clean and repair water gauges.

Clean and repair water glasses on expansion tanks and renew valves and glasses.

Inspect all pipe work on diesel engines.

Repair water tanks and toilets on diesel engines and fill tanks with water.

Open stopped up sumps and drains on diesel engines.

Disconnect air pumps, governors, shutter cylinders, air magnet valves and anything to which a pipe is connected.

Remove and replace all coverings over pulleys and belts.

Inspect and renew all rubber hose on disel engines.

Renew and repair steam heat connectors on passenger engines.

Inspect and renew all hose connections between units.

Repair sandbox doors and replace same.

Repair bands on exhaust manifolds.

Remove and replace thermostat controls on engines.

Make service runs over the entire Louisville terminal in order to make repairs on switch engines.

Make service runs to 10th Street for repairs on incoming passenger engines.

Repair and renew all air, sand, water, and oil hose at Roundhouse.

Open sand pipe to sanding towers.

Do all welding and brazing for the pipe gang.

Inspect, test and repair all work on steam generators.

Cut engines out and in at 10th Street, cut and couple units and check air.

Check and put oil in steam generator water pumps.

Repair water jumper connections on Alco engines.

Remove water pipe and hose on top of all Alco engines and renew gaskets for same.

Remove and replace all gratings, louvers and panels.

Drain cooling system when necessary for repairs.

Take samples of water for chemical test and add water treatment compound when needed.

Remove and replace defective hot water cab heaters.

21. Prior to February 18, 1957, petitioners who are electricians performed duties of which the following are typical and illustrative:

Make daily, monthly and semi-annual inspections of radio cabooses, including checking battery gravity and battery straps.

Test radio and check alternator belts, visual inspection of terminal belts, voltage regulators and pilot lights.

Test walkie-talkies and replace batteries and antennas when necessary.

Make out monthly inspection cards.

Check battery cells with volt meters and hydrometers.

Wash batteries and flush when necessary.

Check brushes in alternators.

Blow out equipment with dry air and grease idlers.

Check locomotive radios for transmission and reception.

Replace brushes in motor generator sets.

Replace defective transmitters, power supply and receivers.

Check train control work on diesels.

Check and inspect diesel locomotives for lighting, spare lamps, fuses, generators, alternators, power contacters and interlocks, reverses, resistors, air compressor pressure switch, fuel pumps, load regulators, jumper cables, throttle operation.

In Strawberry Yards maintain two—50 horsepower motors and controller, one fuel station pump motor and maintain tower lights and all building lights.

In main yard office maintain one fuel station pump motor and all building lights.

Maintain all lights in Central Avenue building and race horse platform lights.

In east Louisville, maintain fuel station pump motor and one—20 ton overhead crane and all building lights.

22. Prior to February 18, 1957, petitioners who are laborers performed duties of which the following are typical and illustrative:

Operating sand car; Fueling diesels; Hostler helping; Diesel cleaning and running for parts to and from storeroom.

23. On and prior to February 17, 1957, the work detailed in the preceding paragraphs was performed by petitioners in the roundhouse and on the inspection and work pits constructed about the year 1948 west of the boundary fence and west of the short line mains as located until recently moved to their present location just east of the roundhouse site. From November 27, 1956, to February 18, 1957, the work was done by petitioners at the new inspection and work pits located at the site of the old short line mains west of that section of the boundary fence which was torn down at the time of the construction of the new pits. A portion of this work was also done by the petitioners in the South Louisville roundhouse until it was torn down, and a portion has been done at 10th Street Station,

and, with respect to switch engines, all over the Louisville terminal. Since February 18, 1957, the same work has been done on the new inspection and work pits constructed in 1956 at the site of the old short line mains and west of the site of the boundary fence which was torn down at the time of the construction of the pits. Portions of the work are also done at 10th Street Station and, with respect to switch engines, all over the Louisville terminal. Some of this work is now being performed by employes whose seniority is junior to that of petitioners and who have never held seniority in the roundhouse district. Much of the work is still being performed by petitioners on less preferable shifts than those upon which they were formerly employed and all of petitioners are performing substantially the same work as they did before but with seniority dating now only from February 18, 1957.

24. The following tables show the names of petitioners who did this work prior to February 18, 1957, their true seniority dating, the name of the employe by whom this job has been taken and the seniority dating of the employe now doing the work:

MACHINISTS

Name	Seniority	Name of Employe Taking Job	Seniority
J. D. Masden	8 20 22	E. C. Grayson	11 16 53
E. H. Miller	8 22 22	R. L. Masden	1 23 37
R. C. Polk	9 27 22	A. Bingham	10 18 54
F. A. Ernst	9 19 22	R. D. Cummings	1 27 55
W. J. Dietchman	10 6 22	J. Phillips	8 17 54
C. L. Friend	10 7 22	O. Pennington	12 6 55
J. C. Litsey	10 11 22	J. P. Hayden	5 23 45
J. W. Welsh	11 20 22	J. C. Litsey	2 18 57
O. C. Lee	1 25 23	A. E. Fleig	8 21 51
H. W. Olges	3 16 23	L. C. Hagan	2 18 57
C. J. Dietsche	3 29 23	O. B. Ross	2 4 57
Joseph Lord	4 2 23	J. W. Welsh	2 18 57

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Name	Seniority	Name of Employe Taking Job	Seniority
R. E. Reiter	7 26 23	J. C. Lloyd	10/11/56
G. C. Anderson	9/18/23	C. R. Friend	2/18/57
L. C. Hagan	1 22/36	H. W. Olges	2 18/57
E. E. Holselaw	1 22/36	G. W. Metcalf	2/18/57
H. B. Briley	1 22/36	G. C. Anderson	2 18/57
R. C. Sarver	1 22/36	W. A. Moore	1 4 57
J. F. Sheeley	12 1/36	O. C. Lee	2 18/57
G. W. Metcalf	7/ 1/41	E. E. Holselaw	2 18 57

SHEETMETAL WORKERS

Alanzo Taylor	12/15/23	W. L. Thompson	10/27/36
R. L. Fowle	6 15/25	W. D. James	2/18/57
Geo. Siegrist	6/10/28	T. L. Roden	9/ 1/56
W. D. James	1 26/36	Geo. Siegrist	2/18/57
K. L. Putman	12/ 7/36	R. L. Fowle	2/18/57
Leroy Wines	3/23/48	J. A. Masden	2 18/57
J. A. Ballou	4 30/48	Leroy Wines	2/18/57
J. A. Masden	5 1/48	B. L. Burch	3 15/50

ELECTRICIANS

G. H. Farley	11 3/39	J. E. O'Brien	1/29/52
A. P. Roth	1/30/43	E. V. Kroll	5/31/56
A. B. LeMaster	2/23/50	R. G. May	11/ 4/53
J. W. Ritter	9/29/51	G. H. Farley	2 18/57
O. E. Heffner	1/13/52	C. F. Anderson	8/ 4/53
L. W. Steel	5/26/52	L. Merrifield	2 18/57
H. Johnson	3/ 7/53	A. P. Roth	2/18/57
L. Merrifield	7/16/56	M. T. Irvin	2/18/57
L. G. Lewis—Upgraded Electrician	4/22/53	J. A. Fuchs	11/ 1/55

LABORERS

1. I. T. Ferrell	8 19/22	Same Job	2/18/57
2. F. E. Oschner	10/ 6/22	Same Job	2 18 57
3. W. A. Foley	1/20/23	Thadis Day	10 11 55
4. F. T. Wells	3 13/23	E. G. Bush	3/ 3/54
5. C. A. Carter	4 3/23	Sam Holselaw	1 4/23
6. T. Gill	5 16/23	Same Job	2/18/57

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Name	Seniority	Name of Employe Taking Job	Seniority
7. McK. Cross*	6/25/23	G. H. Johnson	6/ 6/22
8. C. W. Jones	9/ 1/23	Same Job	2/18/57
9. Ray Reynolds	9/ 7/23	Promoted to Boiler Shop	
10. H. S. Gentry	1/ 4/24	Same Job	2/18/57
11. Henry Harris	2/ 6/24	Same Job	2/18/57
12. Jos. M. Gordon	2/23/24	J. T. Burton	1951
13. Earl Simpson	3/18/24	Same Job	2/18/57
14. Sam Adams	4/13/24	Same Job	2/18/57
15. J. E. Williams	5/24/24	M. Cross	2/18/57
16. C. E. Ewing	6/16/24	Same Job	2/18/57
17. C. E. Cowman	8/20/24	Filling Vacations	2/18/57
18. Jackson Fry	8/29/24	Filling Vacations	2/18/57
19. C. A. Wiley	10/24/24	Filling Vacations	2/18/57
20. D. L. Boone	12/ 1/24	Jeff. Jackson	1954
21. F. B. Hickman	5/27/25	Filling Vacations	2/18/57
22. J. D. Barnes	10/17/25	Filling Vacations	2/18/57
23. Robert Ballard	2/ 1/26	Filling Vacations	2/18/57
24. Manuel Welsh	3/ 3/26	Filling Vacations	2/18/57
25. Alvin Laird	5/ 4/26	Filling Vacations	2/18/57
26. Revel Williams	5/17/26	Filling Vacations	2/18/57
27. J. G. McGill	9/24/26	Filling Vacations	2/18/57

*Carter and Cross, while replaced by men senior to them, now hold seniority, in their craft, of February 18, 1957. All of the laborers above named, whether replaced by senior men, or by junior men, or whether doing their same work, or whether filling vacations, have a new seniority dating of February 18, 1957.

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POSITION OF EMPLOYES: 1. It is the position of petitioners that they have been deprived wrongfully of their seniority by the carrier and by the unions who represent their crafts in the failure of the carrier, with the approval of the unions, to dovetail their seniority with the seniority of the men on the roster of the South Louisville shops, the same work, to-wit: inspection and running repairs and cleaning of diesel engines, is now being done and has been done since February 18, 1957, at the same place as was done before. Prior to February 18, 1957, petitioners did this work with seniority as shown on the South Louisville roundhouse roster. Since that date many of the petitioners are doing the same work at the same place but on less preferential shifts and with seniority dating only from February 18, 1957. Many of the jobs done by petitioners prior to February 18, 1957, are now being done by men junior in seniority to them and who hold seniority on the South Louisville shops roster.

2. The effect of the action taken by the carrier is this: the same work is being done, the same men are working, not all of them at the same job or shift, but in the shuffle petitioners lost their seniority. When they left work on February 17, 1957, they had their original seniority. When they returned to work on February 18, 1957, they had no seniority. The carrier reduced forces on February 17, 1957, and restored forces on February 18, 1957. In the restoration, petitioners were not restored to service in accordance with their seniority, as provided in Rule 26(g) of the skilled agreement and rule 14(c) of the unskilled agreement.

3. Petitioners do not claim or contend that the carrier had no right to abolish the roundhouse and to consolidate the work theretofore done by roundhouse forces with the work theretofore performed by the South Louisville shops forces. Petitioners recognize the right of management in the interest of economy or efficiency to combine jobs but

they contend that where the same type work is being done at the same location that it is a violation of the agreements to deprive petitioners of their true seniority and arbitrarily assign to them a seniority dating only from February 18, 1957.

4. Petitioners do not contend that they are entitled to perform the work of inspecting, cleaning and making of running repairs to diesel locomotives to the exclusion of the men on the South Louisville Shops roster. They do contend that their names should go on the South Louisville shops roster according to their true seniority and that their seniority standing should be dovetailed in with the standing of the employees whose names appeared on the South Louisville shops roster on February 17, 1957, and that in accordance with such seniority they continue to do the work they did prior to February 18, 1957.

5. The following provisions of the skilled employes' agreement which became effective September 1, 1943, and has been revised to February 1, 1952, are pertinent to petitioners' claims.

Rule 29 of that agreement deals with seniority and reads as follows:

> "Seniority of each employee covered by this agreement will begin from the date and time the employee starts to work."

Rule 29(b) provides that seniority will be confined to the point employed and provides that at Louisville, Kentucky, seniority rosters for machinists, sheetmetal workers and electricians will be maintained at the South Louisville shops and the South Louisville roundhouse.

Rule 29(c) provides that seniority rosters will be revised in January of each year, and will be open to protest and correction for a period of sixty days.

Rule 26 deals with reduction in force.

Rule 26(a) reads as follows:

"When it becomes necessary to reduce expenses, the force at any point or in any department shall be reduced, seniority as per Rule 29 to govern; the employes affected to take the rate of the job to which they are assigned."

Rule 26(c) reads as follows:

"When employes laid off by reason of force reduction desire to retain their seniority, they must file their name and address with the officer in charge and their local chairman not later than 10 days from date cut off. Forms for this purpose will be furnished, to be filled in by the cut-off man, 1 copy for the local chairman and 1 copy for the officer in charge, each of whom will furnish the man a receipt for his notice. The employe will be responsible for advising in similar manner of any change in address."

Rule 26(d) reads as follows:

"Employes whose positions are abolished may, within 4 days after notification, exercise their seniority over any junior employe in their classification. Other employes displaced may exercise their seniority in the same manner. Four calendar days notice will be given the employes whose positions are to be abolished, copy to be given the local chairman. Employes exercising seniority under this paragraph will not be granted leave of absence until they have satisfactorily qualified for such jobs."

Rule 26(g) reads as follows:

"In the restoration of forces employes will be restored to service in accordance with their seniority, if available. Failure on the part of the employe to notify proper officer and local chairman within 10 days after

notice has been mailed to last recorded address of intention to return to work, will be sufficient proof that the employe does not intend to return to work, and his name will be stricken from the seniority list. In case of sickness or other good cause proper leave of absence will be arranged. Copy of notice sent to employe to return to work will be furnished local chairman. Local chairman will also be furnished list of all employes to be restored to service."

6. The following provisions of the unskilled employes' agreement which became effective June 1, 1942, and has been revised to February 1, 1952, are pertinent to petitioners' claims.

Rule 10(a) reads as follows:

"Seniority of employes will be computed from the date the employe's pay starts provided he is employed on sixty days in a period of one year."

Rule 9(a) provides that seniority rosters will be compiled by seniority districts and show the employes' dating in each rank to which he is entitled.

Rule 9(b) provides that seniority rosters will be revised in January of each year and will be open to protest and correction for a period of sixty days.

Rule 13(a) reads as follows:

"When force is reduced, the senior employes in the seniority subdivision shall be retained, unless the Management and the Committee agree that a senior man is not qualified."

Rule 13(c) reads as follows:

"Employes whose positions are abolished may within four days, and employes having line-of-road seniority may within ten days, after notification that their positions will be abolished, displace any junior

employe according to their seniority rights under this agreement. Other employes displaced may exercise seniority in the same order."

Rule 14(a) reads as follows:

"When employes laid off by reason of force reduction desire to retain their seniority rights, they must file their address not later than ten days from time cut off. A form for the purpose will be furnished in duplicate, to be filled in by the cut-off man, one copy to the Local Chairman and the original for the Master Mechanic (or the Assistant Master Mechanic or General Foreman if there be no Master Mechanic), which officer will give the man receipt for his notice."

Rule 14(c) reads as follows:

"In the restoration of forces laid-off men will be returned to the service in the order of their seniority."

7. The reduction of forces by the carrier on February 17, 1957, discontinued the jobs theretofore performed by roundhouse forces. The very next day the jobs were restored and the work theretofore done by roundhouse forces was continued. These jobs were permitted by the carrier to be bid in by men from the South Louisville shops regardless of seniority standing as compared to petitioners, but petitioners were not allowed to bid on the jobs. The jobs that were not bid on were then assigned by the carrier to petitioners with a new seniority dating of February 18, 1957. This is clearly a violation of Rule 26(g) of the skilled agreement and Rule 14(c) of the unskilled agreement.

8. When the carrier purported to discontinue all roundhouse jobs at the close of the third shift on February 17, 1957, petitioners' names appeared on the roundhouse seniority roster. Notwithstanding the purported discontinuance of all roundhouse jobs, the carrier maintained the roundhouse seniority roster intact. On March 25, 1957, the

carrier's director of personnel advised counsel for petitioners that seniority rosters were being maintained for the roundhouse district and that the men whose names appeared thereon had the same standing on March 25, 1957, and February 18, 1957, as they had prior to the latter date. If the carrier purported to discontinue all roundhouse work, why were roundhouse rosters maintained subsequent thereto?

9. Summing up, it is the contention of petitioners that under the rules in effect in both the skilled and unskilled agreements, petitioners have been deprived of their seniority in violation of such agreements in that:

(1) Petitioners hold seniority in the South Louisville roundhouse district covering the entire area west of the boundary fence or the line on which the boundary fence stood for more than fifty years between the back shops and the roundhouse.

(2) The work which petitioners have performed for many years in the roundhouse district comprises inspections, light repairs, running repairs, and cleaning of diesel engines, work which prior to February 18, 1957, had not been done by the back shop forces.

(3) Since February 18, 1957, the type and character of the work and the place of such work theretofore performed by petitioners have remained the same.

(4) The purported reduction of forces in the roundhouse district did not result in the curtailment of any of the work theretofore performed by the roundhouse forces. Men from another district, the South Louisville shops, were permitted to bid for these jobs and petitioners were not permitted to do so. As a result, men who were awarded these jobs have less seniority than petitioners. Where jobs were not bid in, petitioners were assigned to them by the carrier on the basis of seniority dating only from February 18, 1957.

(5) The agreements require reduction of forces to be on the basis of seniority. The seniority of petitioners was not protected in the purported reduction of forces.

(6) Actually there was no reduction of forces inasmuch as the same work continued to be done in the same places. If there was a reduction of forces, there was an immediate restoration of forces.

(7) The agreements in force require the restoration of forces to be on the basis of seniority. The seniority of petitioners was not protected in the restoration of forces.

(8) In short, petitioners have been deprived of their seniority in violation of the agreements.

10. All data contained in or attached to this submission in support of the position of petitioners has been presented to the carrier in connection with this dispute.

(1) Bulletins 39, 40, 41, and 42 were protested in writing to the master mechanic of the carrier by all of the petitioners.

(2) The placing of petitioners' names at the bottom of the South Louisville shops roster was protested by each of petitioners to carrier's master mechanic.

(3) The seniority standing of petitioners in the South Louisville roundhouse district from and after February 18, 1957, was requested of the carrier by petitioners' counsel and advice with respect to such inquiry was given to petitioners' counsel by carrier's director of personnel.

(4) The deprivation of petitioners' seniority was called to the attention of the general officers of the carrier by petitioners' counsel.

(5) The carrier is a party signatory to the skilled and unskilled agreements and familiar with their provisions dealing with the protection of seniority of its employes.

WHEREFORE, petitioners demand:

1. Consideration of their submission hereinabove set forth;

2. An oral hearing of their dispute;

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3. An award by the Second Division of the National Railroad Adjustment Board requiring the carrier to restore petitioners to their same seniority held prior to February 18, 1957, with the right on the part of petitioners to perfrom their same jobs performed by them prior to said date, and requiring the carrier to pay to petitioners for any time lost as a result of the deprivation by the carrier of their seniority;

4. All other relief to which petitioners may be entitled.

CARRIER'S STATEMENT OF FACTS: Under date of February 15, 1957, force reduction was made at the South Louisville, Kentucky, roundhouse under the provisions of Rule 26 of the shopmen's skilled agreement and Rule 13 of the unskilled agreement (International Brotherhood of Firemen and Oilers), with all assigned employes cut off.

POSITION OF CARRIER: Carrier denies that petitioners have been denied their seniority rights. Reduction in force was made consistent with the provisions of the applicable agreements and petitioners still retain the seniority rights held by them in the South Louisville roundhouse seniority district.

At the time of the reduction in force in the South Louisville roundhouse the affected employes made application for transfer to the South Louisville, Kentucky, shops. Effective as of February 18, 1957, the petitioners were placed on job assignments and established seniority in the shops as of that date and in accordance with current agreements. They were placed on the seniority roster in their respective classifications in the order of their standing on the roundhouse roster.

There is no rule either in the skilled or unskilled agreements with carrier's shop craft employes which permits of dovetailing of the seniority rosters as suggested by the petitioners.

On January 28, 1957, representatives of the carrier held a conference with all of the shop craft representatives comprising System Federation No. 91, AFL. At that conference these representatives were fully apprised as to the details of the force reduction. Various rules of the applicable agreements were discussed and it was understood that the action to be taken constituted no violation of the bargaining agreements as interpreted by the carrier and System Federation No. 91, AFL.

Rule 145 (a) of the current shopmen's skilled agreement provides:

> "The right to make agreements covering rates of pay and working conditions, and to interpret and apply them, respectively, for the management and the employes herein covered, is retained by the parties signatory thereto. When settlement is not reached by negotiation, the matter concerned may be pursued by further handling under the provisions of the Railway Labor Act."

Rule 145(b) of that agreement provides:

> "The Director of Personnel for the railroad and the General Chairman for the employes, have authority to reach decision on any dispute, grievance, controversy, or difference of opinion affecting this agreement in any manner whatsoever, whether the case comes to them on appeal or otherwise. Decision reached on any such question by mutual agreement under this rule shall be final, and shall not be open to any question thereafter."

Rule 32 of the current shopmen's unskilled agreement provides.

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"The rights to make agreements covering rates of pay and working conditions, and to interpret and apply them, respectively, for the Management and the employes herein covered, is retained by the parties signatory thereto. When settlement is not reached by negotiation, the matter concerned may be pursued by further handling under the provisions of the Railway Labor Act.

The Director of Personnel for the railroad, and the General Chairman for the employes, have authority to reach decision on any dispute, grievance, controversy, or difference of opinion affecting this agreement in any manner whatsoever, filed by the employe or employes, whether the case comes to them on appeal or otherwise. Decision reached on any such question by mutual agreement under this rule shall be final, and shall not be open to any question thereafter.

General rulings or interpretations will not be made on this agreement, except in conference held between the Director of Personnel, for Management, and the General Chairman, for employes concerned."

There is no dispute between carrier and System Federation No. 91, AFL, concerning petitioners involved in the South Louisville, Kentucky, roundhouse force reduction. There is, therefore, no merit to the request of the petitioners and it should be denied.

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FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The grievance herein involves consequences flowing from the closing of the South Louisville Roundhouse, a separate seniority point of the carrier. The claimants in Docket No. 2787-I are employes of the South Louisville Roundhouse, and they advance the primary claim that they are entitled to be dovetailed in seniority with employes of the South Louisville Shops, another separate seniority point.

Seniority rights, including rights to have seniority dovetailed, are created or extended solely by contract or agreement negotiated between the carrier and the duly accredited representatives of the respective craft or class of employes.

The record in Docket 2787-I discloses that no agreement provision for the dovetailing of seniority has been negotiated, or agreed to by the carrier and the duly accredited employe representatives. The seniority rules of the current collective agreement provide only for standard point seniority, which does not call for dovetailing of seniority when a point is closed or abolished.

We find no merit in the contention of the claimants that the South Louisville Roundhouse was not in fact closed or in the contention that the closing of the South Louisville Roundhouse was in bad faith or a subterfuge. When a

point is closed, the work theretofore performed at that point is often transferred to another point, and from all that appears in the record, that is what happened in these circumstances.

The controlling agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1958.

PLAINTIFFS' MOTION TO AMEND FINDINGS OF THE JEFFERSON CIRCUIT COURT.

* * * * * * *

Plaintiffs move the Court to strike from the Court's Opinion of August 25, 1960 the last two sentences in the first paragraph and to substitute in its stead the statements found below.

(s) Joseph B. Helm,
Attorney for Plaintiffs,
511 Marion E. Taylor Bldg.,
Louisville 2, Kentucky,
JUniper 4-4356.

PROPOSED ORDER.

IT IS HEREBY ORDERED that the last two sentences contained in paragraph 1 of the Court's Opinion of August 25, 1960, be and they are hereby stricken and in substitution thereof the following sentences be inserted:

> ". . . Plaintiffs allege that on February 17, 1957, the L. & N. with the express approval of the defendant union discontinued, on paper only, its Roundhouse operations where plaintiffs were employed but, in fact, continued the same jobs at the same locations under the jurisdiction of the South Louisville Shops seniority roster. The employees of the South Louisville Shops were then given priority to bid on the jobs previously held by plaintiffs, the bargaining representatives and the L. & N. having reached the conclusion that plaintiffs would have to go to the foot of the seniority roster of the South Louisville Shops."

ENTERED this ____ day of September, 1960.

_____

Judge.

OVERRULED.
(s) Lampe, J.

PLAINTIFFS' MOTION TO AMEND THE JUDGMENT OF JEFFERSON CIRCUIT COURT ENTERED SEPTEMBER 12, 1960.

* * * * * * *

Plaintiffs, O. C. Lee and others, move the Court to amend the Judgment entered herein on the 12th day of September, 1960 by adding to said Judgment the attached paper entitled Amended Judgment.

Affidavits of plaintiffs, O. C. Lee, Roy Fowle, and K. L. Putman filed herewith are in support of this Motion.

EXCERPTS FROM AFFIDAVIT OF O. C. LEE.

* * * * * * *

Affiant, O. C. Lee, states that he is one of the plaintiffs in this action, that the action is one for declaration of rights as against the defendants Louisville and Nashville Railroad Company, System Federation No. 91 of The Railway Employes Department A.F.L.-C.I.O., International Association of Machinists, Sheetmetal Workers International Association, International Brotherhood of Electrical Workers and International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, as to interpretation of contracts between said defendant Unions and the defendant, Louisville and Nashville Railroad Company, and for an accounting for wages for time lost and for expenses.

Affiant says that the claims as to interpretation of said contracts involve seniority rights of plaintiffs under said contracts, priority in jobs thereunder, priority in working hours, and in selection of vacation periods and other rights, all of which rights are not translatable into monetary valuation.

* * * * * * *

WITNESS my signature this 27th day of September, 1960.

(s) O. C. Lee.

SUBSCRIBED AND SWORN to before me this 27th day of September, 1960.

My commission expires July 15, 1962.

(s) Joseph B. Helm,
Notary Public, Jefferson County,
Kentucky.

EXCERPTS FROM AFFIDAVIT OF ROY FOWLE.

. . . . . .

Affiant, Roy Fowle, states that he is one of the plaintiffs in this action, that the action is one for a declaration of rights against defendant railroad and unions as to the interpretation of a contract as to plaintiff's and other's seniority rights and for an account for wages lost because of wrongful loss of seniority.

. . . . . .

WITNESS my signature this 3 day October, 1960.

(s) Roy Fowle,
Affiant.

SUBSCRIBED AND SWORN to before me this 3rd day of October, 1960.

My commission expires July 15, 1962.

(s) Joseph B. Helm,
Notary Public, Jefferson County,
Kentucky.

EXCERPTS FROM AFFIDAVIT OF K. L. PUTMAN.

* * * * * * *

Affiant, K. L. Putman, states that he is one of the plaintiffs in this action, that the action is one for a declaration of rights against defendant railroad and unions as to the interpretation of a contract as to plaintiff's and other's seniority rights and for an accounting for wages lost because of wrongful loss of seniority.

* * * * * * * *

WITNESS my signature this 3rd day of October, 1960.

(s) K. L. Putman,
Affiant.

SUBSCRIBED AND SWORN to before me this 3rd day of October, 1960.

My commission expires July 15, 1962.

(s) Joseph B. Helm,
Notary Public, Jefferson County,
Kentucky.

AMENDMENT ENTERED OCTOBER 6, 1960, TO THE JUDGMENT OF THE JEFFERSON CIRCUIT COURT.

* * * * * * * *

Judgment of this Court entered on the 12th day of September, 1960 is hereby amended to add the following paragraph:

IT IS HEREBY ORDERED AND ADJUDGED that the amount in controversy as to each of the plaintiffs is in excess of $200.00, exclusive of interest and costs, and as to plaintiffs, K. L. Putman and Roy Fowle is in excess of $2,500.00 each, exclusive of interest and costs.

STATUTES INVOLVED.

Section 3 First (m) of the Railway Labor Act provides (45 U.S.C. § 153 First (m)):

> "(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute."

Section 3 First (p) of the Railway Labor Act provides (45 U.S.C. § 153 First (p)):

> "(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed

a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."